

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

DOUGLAS F. CARLSON
MOTION TO MODIFY AND CLARIFY
THE *SPECIAL RULES OF PRACTICE*

July 15, 1997

In Order No. 1186, Attachment D, the Commission announced the *Special Rules of Practice* that will govern Docket No. R97-1. Section 3(C), which is titled "Exceptions to general service requirements for certain documents," provides that

Discovery requests, objections and answers thereto need to be served on the Commission, the OCA, the Postal Service, and the complementary party, and on any other participant so requesting, as provided in sections 25-27 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

Section 3(C) presumably exists to reduce the costly burden of serving these documents on all parties of record.

Section 2(B) of the *Special Rules* allows a participant to file a motion to compel another party to provide a more-responsive answer to a discovery request than the party initially provided

I hereby move to amend § 3(C) specifically to include motions to compel an answer to an interrogatory as documents that are exempt from the general-

service requirements. As a matter of policy, this amendment is sensible. A motion to compel an answer to an interrogatory is very similar to an objection, which already is exempt; indeed, at times, a motion to compel will be the interrogating party's response to an objection. A motion to compel is, in effect, merely an element of a discovery dispute between two parties. Therefore, the only parties that need to be served with motions to compel are the other party to the dispute, the Commission, the OCA, and any parties that have requested to be served with all discovery-related filings.

While my proposed amendment adds consistency to § 3(C), it also has a practical purpose. If a party filing a motion to compel an answer to an interrogatory were required to serve the motion on several dozen participants, the photocopying and postage costs of filing the motion would be quite high. For an individual such as I who is using his own, personal financial resources to participate in a case, costs are a serious consideration — and a potential obstacle. Unfortunately, motions to compel answers to interrogatories sometimes are necessary because the Postal Service does not always provide responsive answers to interrogatories, even though the questions are drafted very precisely and carefully. For example, at various times in recent dockets, including MC96-3, MC97-2, and MC97-4, the OCA, Nashua/Mystic/Seattle, David B. Popkin, and I have experienced difficulty in obtaining responsive answers from the Postal Service to our interrogatories. If I were required in a large, omnibus case to serve all participants with a motion to compel an answer to an interrogatory, the Postal Service or any other party could chill my participation in this case simply by filing objections or nonresponsive answers to my interrogatories, thus requiring me to file costly motions to compel answers to the interrogatories.

For these reasons, I request that § 3(C) of the *Special Rules of Practice* be modified to exempt motions to compel answers to interrogatories from the general-service requirements

I also request a ruling clarifying the first sentence of § 3(C). The first sentence of this section begins, "Discovery requests, objections and answers thereto need to be served on the Commission, the OCA, the Postal Service, and the complementary party[.]" As written, the term "answers thereto" is ambiguous because, given the punctuation and grammatical structure of the sentence, "thereto" cannot refer back to either "discovery requests" or "objections." Given, however, that "thereto" must refer back to "discovery requests" or "objections," two plausible interpretations exist. Under the first interpretation, only "answers" to objections would be exempt. I am not comfortable with this interpretation because a party's method of responding to an objection is a motion to compel, not an "answer." Under the second interpretation, answers to discovery requests *and* responses to objections (motions to compel answers to interrogatories) would be exempt from the general-service requirement. This interpretation is, perhaps, more plausible than the first one because a response to a discovery request is, according to § 2(C) of the *Special Rules*, referred to as an "answer," while a response to an objection is a motion to compel. In any event, to eliminate this confusion, I request that the Commission clarify § 3(C) to specify whether (1) answers to discovery requests are exempt from the general-service requirement and (2) motions to compel answers to interrogatories are exempt from the general-service requirement.

Respectfully submitted,

Dated: July 15, 1997



DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required participants of record in accordance with section 12 of the *Rules of Practice* and section 3(B) of the *Special Rules of Practice*.

A handwritten signature in cursive script, reading "Douglas F. Carlson", written over a horizontal line.

DOUGLAS F. CARLSON

July 15, 1997
Emeryville, California